

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Tropicana Products Inc.)	EB-09-LA-0001
)	NAL/Acct. No.200932900006
City of Industry, CA)	FRN: 0019140367
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: September 28, 2009

By the District Director, Los Angeles Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Tropicana Products Inc. ("Tropicana"), former licensee of PLMRS station WPIJ645, in City of Industry, California, apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended ("Act")¹ by operating radio transmitters without a license. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Tropicana is apparently liable for a forfeiture in the amount of five thousand dollars (\$5,000).

II. BACKGROUND

2. On May 1, 2009, in response to a complaint about Tropicana's expired radio license, WPIJ645, which had authorized operations on 462.275/467.275 MHz in the City of Industry, California, an agent from the Enforcement Bureau's Los Angeles Office employed a Mobile Direction Finding ("MDF") vehicle to monitor 462.275/467.275 MHz in the City of Industry, CA. Voice transmissions were detected and determined to be emanating from Tropicana's complex at 240 N. Orange Ave, City of Industry, California, on 462.275 MHz. The agent then conducted an inspection of two portable radios in use at the Tropicana complex. Both radios transmitted on the frequency 462.275 MHz. During the inspection, an engineering manager at the complex informed the agent that the radios had been in use for eight to nine years. The engineering manager was unable to provide the agent with a copy of a FCC license for Tropicana's use of 462.275 MHz.

3. On May 12, 2009, the Los Angeles Office issued a Letter of Inquiry ("LOI") to Tropicana. The LOI requested, in part, a copy of Tropicana's authorization to operate transmitters on 462.275 MHz. On July 2, 2009, Tropicana telephoned the Los Angeles Office and stated that the license had been found, but was expired. The engineering manager then contacted the Los Angeles Office on July 6, 2009, and asked for information concerning how to renew the license.³

¹ 47 U.S.C. § 301.

² 47 U.S.C. § 503(b).

³ As of the date of this NAL, review of the Commission's databases shows no license application on file by

4. Commission records show call sign WPIJ645 was granted to Tropicana Products Inc. and listed the frequencies 462.275/467.275 MHz, but the authorization expired on September 14, 2005, and was cancelled by the Commission on January 7, 2006. Commission records show no current authorization for Tropicana to operate on 462.275 MHz in City of Industry, California.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁴ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁵

6. Section 301 of the Act states that "[no] person shall use or operate any apparatus for the transmission of energy or communications or signals by radio... except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act."⁶ Tropicana's license to operate on 462.275 MHz, under call sign WPIJ645, expired on September 14, 2005. The investigation on May 1, 2009, determined that Tropicana was still operating station WPIJ645 on 462.275 MHz. The engineering manager at the site acknowledged that the operation had been ongoing for several years. The violation occurred on more than one day, therefore, it was repeated. Having held an authorization before, Tropicana was aware such operations required a license. Therefore, the violation was willful. Based on the evidence before us, we find that Tropicana apparently willfully and repeatedly violated Section 301 of the Act.

7. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("*Forfeiture Policy Statement*"), and Section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.⁷ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.⁸ Because the Commission considers a licensee who operates with an expired license in better stead than a pirate broadcaster who lacks prior authority, we downwardly adjust the proposed forfeiture amount to \$5,000.⁹ Applying the *Forfeiture Policy Statement*,

(...continued from previous page)
Tropicana for this frequency in this location.

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act..." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁵ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁶ 47 U.S.C. § 301.

⁷ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ *Miller Breweries East*, 23 FCC Rcd 127, 129 – 130 (EB 2008).

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Section 1.80, and the statutory factors to the instant case, we conclude that Tropicana is apparently liable for a \$5,000 forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Tropicana Products Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of five thousand dollars (\$5,000) for violations of Section 301 of the Act.¹⁰

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Tropicana Products Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹¹ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Tropicana Products Inc. must send electronic notification on the date said payment is made to WR-Response@fcc.gov.

11. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles Office, 18000 Studebaker Road, Suite 660, Cerritos, CA 90703 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to WR-Response@fcc.gov.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

¹⁰ 47 U.S.C. §§ 301, 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80.

¹¹ See 47 C.F.R. § 1.1914.

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13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Tropicana Products Inc.

FEDERAL COMMUNICATIONS COMMISSION

Nader Haghight
District Director
Los Angeles District Office
Western Region
Enforcement Bureau